

(ii) Pursuant to a departmental permit issued by the Administrator for the article;

(iii) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of *Phytophthora ramorum*; and

(iv) With a tag or label bearing the number of the departmental permit issued for the article attached to the outside of the container holding the article, or attached to the article itself if not in a container.

(b) *Without a certificate or departmental permit.* (1) The regulated or restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(2) The regulated or restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

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#### **§ 301.92-5 Issuance and cancellation of certificates.**

(a) An inspector<sup>3</sup> may issue a certificate for the interstate movement of regulated articles if an inspector determines that:

(1)(i) The regulated articles have been treated under the direction of an inspector in accordance with § 301.92-10 of this subpart; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark; or

(iii) The regulated article is soil that has not been in direct physical contact with any article infected with *P.*

*ramorum*, and from which all duff has been removed.

(iv) The regulated articles are articles of nursery stock that:

(A) Are shipped from a nursery or premises in a quarantined area that is inspected annually in accordance with the inspection and sampling protocol described in § 301.92-11(a) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(B) Are part of a shipment of nursery stock that has been inspected prior to interstate movement in accordance with § 301.92-11(b) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(C) Have been kept separate from regulated articles not inspected between the time of the inspection and the time of interstate movement; and

(D) Have not been grown in, or moved from, other areas within a quarantined area except nurseries or premises that are annually inspected for *Phytophthora ramorum* in accordance with this section, and that have been found free of *Phytophthora ramorum*.

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>4</sup> to prevent the spread of *Phytophthora ramorum*; and

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) Certificates may be issued by any person engaged in the business of growing, processing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate

<sup>3</sup>Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqi.html>.

<sup>4</sup>Sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) provide that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

for the interstate movement of regulated articles if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.92-5(a) of this subpart.

(c) Any certificate that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate has not complied with all conditions in this subpart for the use of the certificate. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

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**§ 301.92-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, processing, handling, or moving regulated articles other than nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.<sup>5</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered

into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.92-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates under § 301.92-5(b) of this subpart) who desires to move a regulated article interstate accompanied by a certificate must notify an inspector<sup>6</sup> as far in advance of the desired interstate movement as possible, but no less than 14 days before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**§ 301.92-8 Attachment and disposition of certificates.**

(a) A certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate and on the

<sup>5</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

<sup>6</sup>See footnote 3 of this subpart.